Supreme Court, U.S.
FILED

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No. _____

IN THE

# Supreme Court of the United States

GARRY L. CAPUTO,
*Petitioner*,
(Inventor)

v.

SEALED AIR CORPORATION,
*Respondent.*

**Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit**

## PETITION FOR WRIT OF CERTIORARI

Garry L. Caputo (Pro Se)
464 Riverside Ave.
Rutherford, New Jersey 07070
201-939-5187

Counsel of Record  Pro Se Litigant (Petitioner)

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## THE QUESTIONS PRESENTED ARE:

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The doctrine of equivalents prevents a copyist from avoiding infringement by making unimportant and insubstantial changes to a patented invention. These copyists will hide behind any means necessary to win infringement cases including tampering with constitutional issues.

This case sets a precedent, which is favoring copyists over inventors, by not disclosing evidence to the inventor so that no evidence can be repudiated. The Federal District Court ruling was based on this non repudiated evidence that the inventor has not seen and defense lay witness testimony making legal decisions. The inventor was barred in this case from seeing any evidence because of false claims of trade secret status given to the defendant's product, barring the inventor the right to due process.

This violation of the inventor's right to a fair trial was the only way that the defendant was going to get away with taking illegal possession of this patented technology.

This court unanimously affirmed the well established doctrine of equivalents factor in Warner-Jenkinson Co. v. Davis Chemical Co. 520 U.S. 17 (1997) and in the Fesco Corporation v. Shoketsu Kogyo Kabushiki Co. L.T.D. (Decided May 28, 2002) and its importance to prevent would-be predators from infringement of patented inventions. However, it was circumvented in this action.

This is new law and works extreme change in the American patent system and due process.

1). Is there a seventh Amendment right to a trial by jury on issues of whether a patent claim is properly enabled under Title 35 U.S.C.~ Part III> Chapter 11>Section 112?

2). Does the Seventh Amendment require, when there are underlying factual issues in patent infringement litigation, be decided by a jury, not a Federal District Court in summary judgement on lay testimony?

3). Can a Federal District Court narrow the claims of a patent to alter the claims as stated?

4). Can a Pro Se inventor be denied access to defense evidence and due process of law based on false claims of trade secret status given to the defendant's product, preventing the inventor from representing himself?

5). Can the inventor be completely barred from seeing any evidence in an infringement case, based on treatment by the court as a lay person, biasing the case in favor of the defense?

6). Can a Pro Se litigant be denied access to evidence pivotal to his case, when there is no attorney available to represent him violating inventor's right to due process?

7). Can a Federal District Court negate U.S.C. TITLE 35>PART III>CHAPTER 28>SECTION 271, & 295, & U.S.C. TITLE 35>PART III> CHAPTER 29>281 as a remedy for inventors to resolve infringement issues?

9). Can a Federal District Court narrow the claims of a patent in a patent infringement case to lessen what the claims actually states, to help would-be infringers to win infringement law suits?

10). Can a Federal District Court deny oral argument from a Pro Se litigant and not deny oral argument form the defense attorney?

11). Can a Federal District Court accept trade secret status for the defendant's product on the word of the defense counsel, without the required proof of trade secret as mandated by trade secret law thereby denying the inventor access to the would-be infringers sealed evidence?

12). Can the Federal District Court accept defense counsel evidence and bar the inventor from repudiating the evidence in self-defense?

## PARTIES TO THE PROCEEDING

Petitioner, Garry L. Caputo Pro Se (inventor) has no parent company. There are no subsidiaries or affiliates.

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## OPINIONS BELOW

The district court entering a judgement in Civil Action No. 99-482 on March 30,2001 granting the would-be patent infringer Sealed Air Corporation summary judgement of noninfringement of U.S. Patent No. 4,579,516 based on lay person testimony and misrepresented evidence presented by the defendant. The inventor from the very beginning of the action requested a trial by jury, which was denied.

This case was based on lay person testimony not qualified to make legal decisions as to patent infringement issues and the defense's misrepresented evidence of noninfringement on six of the claims of the patent which were hidden from the inventor so that the evidence would not be repudiated.

Therefore, the case was decided on lay testimony based on misrepresented evidence and circumvented Federal Patent Law and the inventor was not legally represented in the case by valid counsel because of circumstances set in place by the defense counsel.

It is the inventor's opinion based on the evidence and the hiding of evidence in this action that the defense's stratagem from the beginning of the case was to prevent the inventor from seeing any of the evidence in the proceedings and to avoid, at all possible cost, a trial by jury as requested by the inventor.

Not allowing the inventor to see any of the evidence, biased the proceedings in favor of the defense and denied the inventor due process and a trial by jury.

The case went to the Federal Appeals Court in search of justice, and to show cause, why the district court made an error in its decision based on false evidence not seen nor repudiated by the inventor. The District Court admits on record that the inventor's independent Certified Expert witness found, after examining the defendant's technology,

that the defendant was using and infringing the 516 patent.

Because the inventor was not able to see the Certified Expert witness testimony, the inventor could not participate in the case to help his counsel with technical support. Because of this issue counsel for the inventor was barred from utilizing his client's expertise in developing a valid defense against the defense's evidence. Furthermore, counsel for inventor could not even talk to his client about any evidence in the case, which rendered him an invalid legal representative to prosecute this action. Subsequently, the inventor was left without legal counsel.

The Appeal Court was a continuance of this case denying the inventor due process because this court looked at the same false evidence unchallenged and unseen by the inventor and disregarded the inventor's testimony, the independent Certified Expert witness testimony and the lower court decision. The Appeals Court once again disregarded all evidence presented by the inventor including independent Certified Expert Witness findings.

The inventor, now Pro Se, without legal representation, tried to show the Appeals Court truths and the errors made by the District Court. Somehow, the Court was not hearing the inventor and disregarded the independent Certified Expert witness findings that the defendant infringed the 516 patent and the inventor's testimony that the defense misrepresented evidence.

Therefore, what is the value of a patent in America if it can be infringed upon by a would-be infringer who is protected by a court ruling on misrepresented evidence, lay person testimony making legal decisions, over an inventor's testimony, and an independent Certified Expert witness testimony who has found after reviewing the defendants evidence, that the defendant infringes the 516 patent? None of the defense evidence was seen by the inventor, because the inventor was barred by the Court.

## JURISDICTION

The Federal Court entered an opinion and order on April 8, 2003. A petition for panel rehearing and *en banc* was denied on April 24, 2003 because the inventor Pro Se did not sign the petition in the rush to get the petition submitted timely, and an error that Fedex made because Fedex thought the wrong zip code was on the document. This condition caused the delay in delivery to the court by two days. This Court has jurisdiction under 28 U.S.C. ~ 1254(1).

## CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

The Seventh Amendment of the Constitution of the United States Provides:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury be preserved, and no fact tried by jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."

35 U.S.C. ~ 112(1) provides:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention."

CONSTITUTION OF THE UNITED STATES
DUE PROCESS. REF. BLACK'S LAW DICTIONARY

Due Process Rights:

All rights which are of such fundamental importance as to require compliance with due process standards of fairness and justice. Procedural and substantive rights of citizens against government actions that threaten the denial of life, liberty, or property.

Due Process of Law:

Law in its regular course of administration through the courts of justice. Due process of law in each particular case means such an exercise of power of the government as the settled maxims prescribe for the class of cases to which the one in question belongs. A course of legal proceedings according to those rules and principles which have been established in our system of jurisprudence for the enforces and protection of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution that is, by the law of its creation- to pass upon the subject matter of the suit; and if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process with the state, or his voluntary appearance. Pennoyer v. Neff, 95 U.S.733,733 L.Ed. 565. Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgement upon the question of life, liberty, or property, in its most comprehensive sense; and to have the right of controverting, by proof, every material fact which bears on the question of right in the mater involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law. An orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights before a court having power to hear and determine the case. Phrase means that no person shall be deprived of life, liberty, property or of any right

granted him by statue, unless matter involved first shall have been adjudicated against him upon trial conducted according to established rules regulating judicial proceedings, and it forbids condemnation without a hearing. The concept of "due process of law" as it is embodied in the Fifth Amendment demands that a law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a reasonable and substantial relation to the object being sought. Fundamental requisite of "due Process" is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest, and to assert reasons for such choice. Aside from all else, "due process" means fundamental fairness and substantial justice. Embodied in due process concept are the basic rights of a defendant in criminal proceedings and the requisites for a fair trial. These rights and requirements have been explained by the Supreme Court decisions and included, timely notice of a hearing or which informs the accused of the charges against him or her; the opportunity to confront accusers and to present evidence on one's own behalf before an impartial jury or judge; the presumption of innocence under which guilt must be proven by legally obtained evidence presented; the right to an accused to be warned of constitutional rights at the earliest stage of the criminal process; protecting against self- incrimination; assistance of counsel at every critical stage of the criminal process; and the guarantee that an individual will not be tried more than once for the same offence.

Fourteenth Amendment.....
Fifth Amendment.....
Seventh Amendment .....
Sixth Amendment.....

## THE LAW FOR PATENT INFRINGEMENT IS:

U.S.C. TITLE 35 > PART III > CHAPTER 29 > SECTION 295.
SECTION 295. PRESUMPTION: "PRODUCT MADE BY PATENTED PROCESS"

In actions alleging infringement of a process patent based on the importation, sale, offer for sale, or use of a product, which is made from a process patented in the United States, if the court finds:
1). that a substantial likelihood exists that the product was made by the patented process, and
2). That the Plaintiff has made a reasonable effort to determine the process actually used in the production of the product and was unable to so determine, the product shall be presumed to have been so made, and the burden of establishing that the product was not made by the process shall be on the party asserting that it was not so made.

INFRINGEMENT OF PATENT OF THE U.S.C., TITLE 35 >PART III > CHAPTER 28 > SECTION 271
Infringement Of Patent.
a). Except as otherwise provided in this title, whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the united states any patented invention during the term of the patent therefore, infringes the patent
b). Whoever actively induces infringement of a patent shall be liable as an infringer.
c). whoever offers to sell or sells within the United States or imports into the United States a component of a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a substantial non-infringing use, shall be liable as a contributory infringer.

d). no patent owner otherwise entitled to relief for infringement or contributory infringement of a patent shall be denied relief or deemed guilty of misuse or illegal extension of the patent right by reason of his having done one or more of the following:

1). derived revenue from acts which if performed by another without his consent would constitute contributory infringement of the patent;

2). Licensed or authorized another to perform act which if preformed without his consent would constitute contributory infringement of the patent.

3). Sought to enforce his patent rights against infringement or contributory infringement;

4). Refused to license or use any rights to the patent; or

5). conditioned the license of any rights to the patent or the sale of the patented product on the acquisition of a license to rights in another patent or purchase of a separate product, unless, in view of the circumstances, the patent owner has market power in the relevant market for the patent or patented product on which the license or sale is conditioned.

The law is Under U.S.C. TITLE 35 > PART> III>CHAPTER 28 > SECTION 271 INFRINGEMENT of PATENT

a). Except as otherwise provided in this title, whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the united states any patented invention during the term of the patent therefore, infringes the patent.

b). Whoever actively induces infringement of a patent shall be liable as an infringer.

AND U.S.C. TITLE 35 > PART III > CHAPTER 29 > SECTION 295.

Section 295. presumption: "product made by patented process"

2). That the Plaintiff has made a reasonable effort to determine the process actually used in the production of the

product and was unable to so determine,
the product shall be presumed to have been so made, and the burden of establishing that the product was not made by the process shall be on the party asserting that it was not so made.

INFRINGEMENT OF PATENT OF THE U.S.C., TITLE 35 >PART III > CHAPTER 28 > SECTION 271

Infringement of patent

a). Except as otherwise provided in this title, whoever - without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the united states any patented invention during the term of the patent therefore, infringes the patent.

b). Whoever actively induces infringement of a patent shall be liable as an infringer.

c). Whoever offers to sell or sells within the United States or imports into the United States a component of a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a substantial non-infringing use, shall be liable as a contributory infringer.

d). No patent owner otherwise entitled to relief for infringement or contributory infringement of a patent shall be denied relief or deemed guilty of misuse or illegal extension of the patent right by reason of his having done one or more of the following:

1). Derived revenue from acts which if performed by another without his consent would constitute contributory infringement of the patent;

2). Licensed or authorized another to perform act which if preformed without his consent would constitute contributory infringement of the patent.

3). Sought to enforce his patent rights against infringement or contributory infringement;

Title 35> Part III> Chapter 29> Section 281.

Section 281. Remedy for infringement of patent.

A patentee shall have the remedy by civil action for infringement of his patent.

## STATEMENT OF THE CASE

This case presents a fundamental change in patent and constitution law and litigation procedures to circumvent patents, accomplished by circumventing the "doctrine of equivalents" and inventor's constitutional right to a fair trial and due process in patent infringement case litigation.

Under this well-established doctrine of equivalents, "a product or process that does not literally infringe upon the expressed terms of a patent claim may nonetheless be found to infringe if there is 'equivalence' between the elements of the accused product or process and the claimed elements of the patented invention." Warner-Jenkinson Co. v. Hilton Davis Chemical Co. 520 U.S. 17,21 (1997). The principle has been consistently applied by this Court, in numerous cases, since the Doctrine was first embraced in 1853. It is a frequently recurring issue in patent law and practice because, lower courts have problems understanding patent infringement law.

Petitioner Garry L. Caputo is the owner of many U.S. Patents in the field of the art of continuous motion advanced thermoforming technology systems. This case is about the advanced 516 patented forming roller for producing continuous production output of air bubble cushioning material of the highest quality product never seen before, in this highly specialized industry.

W.R. Grace, Cryovac Division, now known as Sealed Air Corporation was extremely interested in this new technology and copied the inventor's patented machine system employing this advanced technology to produce Air Bubble cushioning material in 1989 and was showing machine system technology to the industry at the same time that the inventor was receiving a Gold Medal Award for the technological innovation in the field of the art of air bubble

cushioning material manufacturing.

This first patent infringement case was settled by W.R. Grace in 1991 in Greenville South Caroline, Federal Court.

When W.R. Grace bought Sealed Air Corporation (63% ownership) the Sealed Air process had changed to the 516 technology as depicted by the only independent Certified Expert witness in this action, the inventors own expert testimony, and the testimony of an expert Mr. John Scheld's professional opinion.

The only way that Sealed Air/Grace was going to win this infringement case was to hide evidence from the inventor so that the inventor could not repudiate evidence submitted by the defendant. Therefore, the defense counsel could have said anything not repudiated, and they would automatically win the infringement case circumventing Federal Patent Law and inclusion of the "doctrine of equivalence" factor and the inventor's right to due process and a fair trial.

If the inventor can not see any evidence against him, the case is biased in favor of the defendant and the inventor's patent rights and opportunity to a fair trial was denied. Because of this reason and unproven claims of trade secret status given to the defendant's forming roller, and the misrepresented false claims of what insubstantial means, and the hiding of pivotal evidence in the inventor's case from the inventor, and the misrepresented claims of the 516 patent as being narrow claims, the doctrine of equivalents factor was not applied in this action and in itself circumvents Federal Patent Law.

The only independent Certified Expert witness in the case testified that the defendant's forming roller infringes the 516 patent. The court disregarded his testimony over non-certified employee and defense counsel testimony, (acting as an expert witness in the field of the art of continuous motion thermo-forming) both not qualified to make legal decisions relative to infringement of the 516 patent.

Additionally, the inventor believes the defense counsel

has misrepresented what was said in this one-sided deposition, answers to interrogatories, and misrepresented admissions on file. The inventor was denied discovery. The inventor has, not seen these admissions and claims of the defense counsel, because the inventor was barred from seeing any of the evidence in this action and only a Federal Court who sealed the evidence, can unseal the evidence so that it can be viewed by the inventor.

This condition biased the case in favor of the defense because the inventor could not repudiate evidence not seen. The inventor's right to due process and a fair trial was also violated by this condition.

If this case is allowed to stand, it will set a precedent, and will impact litigation of any future patent infringement case. This new law will allow would-be patent infringers to circumvent Federal Patent Law to win infringement cases drastically changing the American patent system and the validity of an American Patent for both large and small inventors.

The inventor's case was based on misrepresented evidence and trade secret status given to the defendant's forming roller, even without proof, lay person testimony making legal decisions and counsel for the defense changing the meaning of patent law to suit his own litigating agenda to win this case.

The inventor was denied discovery from the defendant because the inventor was barred from seeing any of the evidence presented by the defense by the court.

The defense could have made any claims in the case whether true or not and they would be undisputed by the inventor.

The inventor was not legally represented in this action because the inventor's attorney was threatened by the defense counsel who has political power and was in fear of losing his ability to provide for his family and was barred by the court from even talking to the inventor about the evidence presented in this infringement case. Therefore, the inventor

was not legally represented in this action as guaranteed by the Constitution.

The United States Court of Appeals for the Federal Circuit, (motion for en banc decision was denied, in this case) has now held "that any statutory requirement for patent infringement, regardless of the reason, gives rise to a transformation of established patent law and court procedures to favor copyists over inventors that generates an absolute bar to the Doctrine of Equivalents based on any claim of trade secret by the defense counsel without proof, and the false claims that the inventor is a direct competitor of the defendant, the would-be infringer will automatically win infringement cases. As proven in this action in the lower courts.

This new law works a drastic change in American patent system rendering all patents irrelevant because there is no defense against unseen evidence and false claims of trade secret without required proof of trade secret as mandated by law, resulting in the undercutting of public policy surrounding patent law and public perception that patents are subsisting over copyists stratagems.

A would-be infringer just needs to claim that the inventor is a direct competitor of the defendant, and is a lay person, and further claim that the product they are using does not infringe the patent. This is supported by uncertified company employees' testimonies, who are not qualified to make a legal interpretations regarding infringement issues. Furthermore, the defense counsel testimony, acting as an expert witness, and who is a true lay person in the field of the art of continuous motion thermoforming was able to obtain trades secret status for their client's product, without proof. This allowed the defendant to circumvent Federal Patent Infringement Law to win this action. The defense also used misrepresented evidence taken out of context, to support the defense arguments.

Small inventors are at greatest disadvantages under this new change in patent litigation law and procedures

circumventing due process, now affirmed by the Federal Appeals Court. Small inventors will not obtain relief from infringers of their patents because of this action.

## REASONS FOR GRANTING WRIT

a). Petitioner seeks review of this case because the judgement in this action is unconstitutional in direct conflict with the Supreme courts precedent support and finding that the ultimate question of enablement is for a jury. However, even if the ultimate question is found one of law, the underlying factual issues are subject to the seventh amendment right to a jury trial. Trial by jury was requested when this case was filed and because of the errors in the Districts Court's judgement the petitioner's Fifth, Six, Seventh, and Fourteenth Amendment rights to due process and a right to a trial by jury were denied.

b). Petitioner seeks review of this case because the judgement in this case is a direct conflict with the courts (1)Warner-Jenkison decision of 520 U.S 17(1997); (2) in conflict with Festo Corporation v. Skoketsu Kabushiki Co. L.T.D. with importance to extreme efforts that is required to prevent would-be infringers from using property that does not belong to them; (3) radically transforming established patent law to favor copyists over patentees and court procedures; severely undercuts the policy behind patent law, the principle of a patent and its protection; (4) denying inventors due process of law; (5) violates the Seventh Amendment right to a fair trial by jury and is in direct conflict with the court's precedent and rulings and the rules of evidence.

The Federal Court in this case has denied the inventor the fundamental right to a trial by jury on issues of enablement, which has historically been the right of a jury to decide. This will minimize on political power of players in our judicial system when one side is a small inventor and the other side is powerful multi-billion dollar corporation. Since

the Federal Circuit has jurisdiction over patent appeals from the district courts, there can be no conflict among the circuits.

1). If this case is allowed to stand, it sets a new precedent against inventors especially small inventors that changes Patent Law principles and court procedures currently in place. This new unfair court litigation practice and procedure will squash the small inventor and favor would-be infringers over inventors and will undermine the American patent system as a reliable means for protecting intellectual property of smaller inventors. Most inventions are made by smaller inventors, and the constitutional purpose of patent law is to promote the progress of science and useful Arts" by granting inventors exclusive rights to their invention for a limited period of time. The judicially created doctrine of equivalents has long played an important, controversial role in realm of patent law. It strives to strike a balance between the two competing policies behind the enforcement of the patent: to protect the inventor's right to exclude others who might steal the product of his work and to clearly notice the public of the invention's boundaries. While the balance has been extremely difficult to achieve, the Supreme Court in Warner-Jenkinson v. Hilton Davis Chemical Co. and Festo v. SMC Corporation has made admirable response to this lingering problem.

Large Corporations are devious in getting around patent law and winning infringement case by misrepresenting as much law and evidence as possible as long as the inventor is barred from seeing any of the evidence so that it can not be repudiated. It is the responsibility of the court to keep the cases lawful. However, some times the courts error, and it is up to the higher court to take a close look at what happen to correct the errors made in the interest of justice.

2). The Federal Circuit has exclusive jurisdiction of patent appeals from the district courts. There can be no circuit conflicts. It is also not possible for the issues presented here to be discussed freely and openly in other

circuits, especially when the inventor's voice is not heard and considered a lay person. The key opinions however, have thoroughly explored the issues and the policies, which are the basis of federal jurisdiction in the court of first instance. 28U.S.C. ~1295(A) and 28 U.S.C. 1338(a).

CERTIORARI SHOULD BE GRANTED BECAUSE:
This action was based on unconstitutional principles as per the 5th, 6th, 7th, and 14th, Amendment rights to a fair trial and due process under law to citizens. Patent infringement rights were also circumvented in this exceptional unconstitutional action of extremes in the litigation process.

Graver Tank & Manufacturing Co. ,339 U.S. 605(1950) this Court recognized that to permit imitation of a patented invention which does not copy every literal detail would be to convert the protection of the patent grant into a hollow and useless thing. Such a limitation would leave room for- indeed encourage- the unscrupulous copyist to make unimportant and insubstantial changes and substitutions in the patent which, though adding nothing, would be enough to take the copied matter outside the claim, and hence outside the reach of the law.

## PETITION FOR A WRIT OF CERTIORARI

Garry L. Caputo hereby petitions for a writ of certiorari to review the judgement of the United States District Court case # 99-CV-482 decided March 30, 2001 in summary judgement in favor of the defendant and with a Final Ruling of August 30, 2002, and for the Court of Appeals for the Federal Circuit case # 02-1556 decided on April 8, 2003 affirming the lower court decision. The basis for the Federal jurisdiction in the court of first instance is 28 U.S.C. ~ 1295(a) and 28 U.S.C. ~ 1338 (a).
Application for the extension of time to prepare this petition has been filed with the court and on July 9, 2003 the time

was extended to August 27, 2003.

## CONCLUSIONS

For all of the reasons and factual evidence cited and Set forth above, this petition should be granted as the case clearly exhibits and demonstrates that the respondent is indeed infringing, the inventor's 516 patent. Corroboration of this petition is inclusive in the testimony of the independent certified expert witness who examined the defendant's product, and whose credentials and background make him unquestionably qualified to make factual conclusions relative to this case. His findings verify that the respondent's product is performing the same functions as the claims of the 516 patent and are insubstantial and are infringing.

It is imperative that the court send a strong message to would-be infringers and their counsel that this kind of frivolous deceptive litigation procedures and predatory practices that violates the Constitutional rights of others has to stop. Respondent's stratagems such as these increase litigation loads in our court system for infringement cases and inventors seeking rightful justice and respect under the patent laws and due process of laws provided the inventor by the Constitution.

If this kind of frivolous defense is allowed to continue, our judicial system will not be a means for inventors to protect their patents and intellectual property. Law protects inventors but their voice is not heard over the voice of super powerful respondents. The inventor's opinion based on the factual evidence is that the respondent is using the inventor's patent and the respondent is making money from the technology. The inventor has been harmed by this powerful respondent and has lost his civil and constitutional rights to a fair trial because of stratagems by most powerful legal minds in the country making money from property that does not belong to them.

This is based on the inventor's own testimony which has been disregarded by the court and an independent certified expert witness testimony who evaluated the respondent's product and concluded that the defendant is infringing the 516 patent.

If the inventor can see the respondent's forming roller he can offer a detailed depiction of the infringement. This case is a powerful and compelling example of what can happen in litigation when the rules of evidence is not followed and erroneous unsupported and sealed evidence is used in deciding cases denying the petitioner the opportunity to repudiate. This new law works significant changes in the American patent system and due process of law.

This condition undermines inventors' confidence in our patent system and validity of due process in our court system in matters of fairness and impartiality of the courts. Pro Se litigants are at greatest risks being held to the same standards as legal professionals to address and respond to issues in a timely fashion where deadlines are almost impossible to meet in our court proceedings. Inventors are lay people in terms of processing responses to court documents and do not have a massive supporting staff to research and respond on the same timely basis of trained legal professionals who do this for a living.

Inventors will not continue to trust and use United States Patent Law system as a means to protect their intellectual property, and patent rights, if the court decisions favor the would-be infringers over inventors. This is contrary to what patent law depicts and will further undermine the patent provisions of the United States Constitution and the public's confidence in the Constitutional rights of our citizens to a fair trial and due process if allowed to stand. The Constitutional purpose of patent law is to "…promote the Progress of science and useful Arts" by granting inventors exclusive rights to their invention for a limited time. Patent Law also needs the public trust that the law will protect their intellectual property right in exchange for

teaching interested parties what the invention is and how it works.

The Writ of Certiorari should be granted in this exceptional case, because the hidden and sealed factual evidence in the case proves willful infringement of the 516 patent. The respondent and their costly efforts to conceal the infringement, utilizing stratagems that circumvent the law and due process of their victim, would have been the only way that the respondent could have won this infringement lawsuit.

The U.S. Supreme Court recently rendered a decision that Patents cover more than their actual words describe. See the "Doctrine of Equivalence Law" and ref. by Supreme Court case file Winans v. Denmead, 15 How 330, 347. Case in point Supreme Court Justice Anthony Kennedy Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., LTD. (see attached Case No. 00-1543 Decided May 8, 2002)

Patent Law as per Supreme Court ruling summarized by Justice Anthony Kennedy's (case No. 00-1543) supports the inventor and the invention, against unimportant and insubstantial changes and substitutions in the patent, which though adding nothing, would be enough to take the copied matter outside the claim, hence outside the reach of the law. "So we'd better declare that these, not-quite-identical inventions are also covered by the patent, provided they are equivalent to the patented invention."

"The substantial equivalents of things, in the sense of the patent law, is the same as the thing itself." Id. at 35, quoting Union -Bag machine Co. v. Murphy, 97 U.S. 120, 125 (1878). Indeed, the essential predicate of the doctrine of equivalents is the notion of identity between a patented invention and its equivalent." Id.

In this case the respondent practiced deception of evidence however, if the certified expert witness testimony can be seen it explains the infringement in detail as evidenced by the court.

For these reasons the petition for Writ of Certiorari should be granted.

Respectfully submitted,

Garry L. Caputo
Inventor Pro Se

464 Riverside Avenue
Rutherford, New Jersey 07070
201-939-5187

# APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

FILED
AUG. 30 2002
GARRY L. CAPUTO, :

Plaintiff, : Civil Action
: No. 99-482
:
v. :
:The Honorable Alfred
: M. Wolin
SEALED AIR CORPORATION:
(US), :
Magistrate Judge
:Susan D. Wigenton
:
Defendant. :

FINAL JUDGMENT

A memorandum and order having been entered March 30, 2001 granting the motion by defendant Sealed Air Corporation (US) ("Sealed Air") for summary judgment of noninfringement of U. S. Patent No. 4,579,516; an order dated July 7, 2001 having taxes (entered June 11,2001 taxing) costs in favor of defendant Sealed Air and against Plaintiff Garry L. Caputo ("Caputo") in the amount of $1,677 ($1667.00); and a memorandum and order dated August 8, 2002 having been issued denying Caputo's motion for reconsideration, and denying both parties' motions for sanctions, including Sealed Air's renewed motion under Fed. R. Civ. P. 11, the Court enters the following judgment:

1. This Court has jurisdiction over the subject matter of the claims and Counterclaims asserted in this action and the parties hereto;

2. Judgment is entered for Sealed Air Corporation (US) and against Garry L Caputo on all of the claims raised in the Complaint for infringement of U.S. Patent No. 4,579,516;

3. Judgment is entered for Sealed Air Corporation (US) on its counterclaim for a declaratory judgment that the forming rollers of Sealed Air's machinery for producing air cushioning material do not infringe any claim of U.S. Patent No. 4,579,516;

4. A money judgment is entered for Sealed Air Corporation (US) against Garry L. Caputo in the amount of $1,667, for taxation of costs;

5. Judgment is entered for Garry L. Caputo against Sealed Air Corporation (US) on Sealed Air's request for designation of this case as an exceptional case and for sanctions under Fed. R. Civ. P. 11;

6. Judgment is entered for Sealed Air Corporation (US) against Garry L. Caputo on Caputo's claims for sanctions.

IT IS SO ORDERED:

Newark, New Jersey
Date: August 29,2002_____
United States District Judge

Original Filed
William T. Walsh, Clerk

August 8, 2002

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

| | |
|---|---|
| GARRY L. CAPUTO, | : Civil Action No. 99-482 |
| Plaintiff, | : MEMORANDUM OPINION |
| SEALED AIR CORPORATION, | : |
| Defendant. | : |

Several motions in this case are now before the Court. First is plaintiff Gary Caputo's motion for reconsideration. In addition, the Court must also decide defendant Sealed Air Corporation's motion for sanctions against plaintiff and for attorney's fees under 35 U.S.C. __ 285, and its motion to strike. Plaintiff's cross-motion for sanctions against defendant and its attorneys is also before the Court.

## BACKGROUND

The Court will recount the facts only very briefly here.

Plaintiff Gary L. Caputo is the holder of United States Patent No. 4,579,516 ("the '516 patent") titled "forming roller for air-cushioning product." This patent covers a specific construction for a forming roller that is one part of the machinery used for producing air cushioning packaging material, commonly known as bubble wrap. Plaintiff has over thirty-six years of experience in the development of packaging products and thirty years of hands-on experience with machinery design and thermo-plastic film engineering.

Defendant Sealed Air Corporation has been in the business of producing air cushioning material since its start in the

industry in the 1960s. It owns numerous patents for the methods and apparatus of making bubble wrap and is an acknowledged global leader in the field.

On February 2, 1999, plaintiff field this action against defendant, contending that defendant was infringing the '516 patent.

Before any discovery occurred, defendant filed for sanctions against plaintiff and his attorney, asserting that they had failed to conduct a sufficient investigation before filing the complaint as required by Federal rule of Civil Procedure 11. This motion was denied by then-magistrate judge Pisano, who concluded that he could not evaluate defendant" allegations on the facts in the record at that time.

During the course of discovery, defendant filed for a protective order, claiming that plaintiff should not be privy to defendant's confidential trade secret information because he is a competitor. The court issued a protective order, and instructed plaintiff to hire an independent expert to review the materials and write a report.

Defendant then filed for summary judgment, and in an opinion and order of April 4, 2001, the Court granted defendant's motion.

After defendant succeeded on summary judgment, it pressed plaintiff to sign a settlement agreement containing certain terms unfavorable to plaintiff. Despite pressure from defendant that it would renew the motion for sanctions, plaintiff refused to sign.

## DISCUSSION

Plaintiff's Motion for Reconsideration:

Plaintiff's motion to reconsider was filed on March 6, 2002. The Court issued its summary judgment opinion on April 4, 2001. Local civil rule 7.1(g), which established the procedure for reargument, provides that "a motion for

reargument shall be served and filed within ten days of the entry of the order or judgment on the original motion...."

As a result, plaintiff's motion, filed eleven months after the court's summary judgment opinion, is woefully late. For this reason, it must be denied.

Defendant's Motion for rule 11 Sanctions Against Plaintiff.

Plaintiff argues that Rule 11 sanctions should be leveled against plaintiff because the lack of evidence for his claim of infringement violates Federal Rule of Civil Procedure 11 (b) (3).Under Rule 11, litigants have the obligation "before filing the complaint, (to make) reasonable inquiry to determine that the complaint [is] well grounded in fact." Judin v. United States, 110 F.3d 780, 784 (Fed. Cir. 1997). Defendant contends that plaintiff's factual basis for his infringement claim – the appearance of the bubble wrap made by defendant's machine – is insufficient. According to defendant, the action would not have been brought had plaintiff reviewed Sealed Air's forming roller and compared it to the claims of the '516 patent.

It was not for lack of trying, however, that plaintiff never observed Sealed Air's forming roller. Defendant refused to allow plaintiff to see Sealed Air's technology at any point. Defendant claimed that it could not allow plaintiff to review its technology because this would involve the disclosure of trade secrets to a competitor. Indeed, defendant sought and received a protective order on this basis. Personal review by plaintiff being out of the question, defendant claims that plaintiff should have performed a closer analysis through a third-party or plaintiff's attorney.

And so plaintiff did. Plaintiff retained expert Arthur Honczarenko, who, after reviewing the technology, agreed with plaintiff's assessment that defendant's technology infringed the '516 patent.

It is of course legitimate for defendant to protect its trade secrets. However, there can be no questions that plaintiff's ability to research the alleged infringement was hampered by defendant's restrictions. This is not a case, as is Judin, in which "no attempt was made to obtain the device." Judin, 100 F.3d at 784.

Defendant emphasizes repeatedly that it must be true that plaintiff had no evidentiary grounds for the infringement action because the Court found that there was no infringement on six different elements of claim one of the patent. Losing a summary judgment motion, however, does not suggest misconduct in bringing a suit. See McClarin Plastics, Inc. v. LRV Acquisition Corp., 1999 WL 507188, at *4 (Fed. Cir. 1999), cert. Denied, 528 U.S. 1079 (2002) (denying motion for sanctions because "negligence in filing and prosecuting the infringement action is not established simply because LRV lost on the merits").

Defendant also suggests that plaintiff should be subject to sanctions for his conduct as a pro se. Despite defendant's contentions, the fact that plaintiff's motion to reconsider was filed many months late is grounds for denying the motion, not awarding sanctions. Plaintiff's motion for reconsideration also contains some aggressive allegations against defendant and its counsel.

Although plaintiff's status as a pro se plaintiff does not insulate him from sanctions, pro se litigants are "generally held to a lower standard that attorneys." Elizabeth Teachers Union, AFT Local 733 v. Elizabeth Bd. of Educ., 1990 WL 174654, at *4 (D.N.J. 1990). See also Poling v. K. Hovnanian Enterprises, 99 F.Supp.2d 502, 517 (D.N.J. 2000), appeal dismissed, 32 Fed. Appx. 32 (3d Cir. 2002) ("Plaintiffs' pro se status rescues them from the brink of sanctions by this Court."). The allegations in the

submissions of plaintiff, a pro se litigant, are not appropriate grounds for Rule 11 sanctions.

In addition, the court sees no evidence for defendant's assertion that plaintiff's motion was brought in bad faith. Plaintiff's motion indicates that plaintiff's grasp of the proper information to include in and the effective way to argue such a motion are not sophisticated, but his concern about the propriety of the Court's decision, however ill-argued, appears genuine. There is no suggestion that plaintiff brought this motion to harass defendant or the court, or to generate additional litigation. Plaintiff's reading of the Court's summary judgment opinion was the first time plaintiff encountered the technical comparison of his invention and defendant's technology because he was barred by the protective order from having access to it. As a result, the Court cannot conclude that plaintiff brought this motion "to harass or cause . . . needless increase in the cost of litigation." Fed. R. Civ. P. 11 (b) (1).

Defendant finally points to plaintiff's retention of a page from defendant's summary judgment papers that contained confidential information and was requested, and confirmed, returned.

The last contention is the most troubling to the Court. Plaintiff erroneously received an unredacted copy of defendant's summary judgment brief. Page 16 of that brief outlined certain aspects of the technology at issue in this case. Despite defendant's request that all copies of page 16 be returned, plaintiff appears to have kept a copy even after assuring his attorney that all copies had been either returned or destroyed. This conduct is indeed vexing to the Court, as it constitutes willful disregard of the Court's protective order. Plaintiff claims that once this page was released to him, he felt that the information therein could not be withdrawn - he already knew it, regardless of whether he retained the written proof – and was thus in "the public domain.." Plaintiff's letter of April 116, 2002 to

Charles Kennedy, Esq. The Court strongly admonishes plaintiff to honor the Court's directives at all times, but does not agree that this action alone is sufficient to justify sanctions. In the future, similar conduct may be.

Defendant's motion for sanctions under Rule 11 will be denied.

Defendant's Motion for Award of Attorney's Fees Under 35 U.S. C. 285.

Defendant also moves for attorney's fees under 35 U.S.C. 285 on the grounds that this is an "exceptional case." According to defendant, the case is exceptional because the suit was frivolous and plaintiff engaged in misconduct as a Pro Se litigant.

In order to award attorney's fees under 285, the Court must engage in a two-step analysis. First, the Court must determine whether there is clear and convincing evidence, that the case is "exceptional." If the Court so determines, the Court must then decide whether an award of attorney's fees to the prevailing party is warranted. Enzo Biochem, Inc. v. Calgene, Inc., 188 F.3d 1362, 1370 (Fed. Cir. 1999). The second inquiry "permits the judge to weigh intangible as well as tangible factors: The degree of culpability of the infringer, the closeness of the question, litigation behavior, and any other factors whereby fee shifting may serve as an instrument of justice." Superior Fireplace Co. v. Majestic Products Co., 270 F.3d 1358, 1378 (Fed. Cir. 2001).

A court may determine that a case is exceptional if there has been "willful infringement, inequitable conduct before the P.T.O., misconduct during litigation, vexatious or unjustified litigation, and frivolous suit." Hoffman-La Roche Inc. v. Invamed Inc., 213 F.3d 1359, 1365 (Fed. Cir. 2000) (citations omitted). Indeed, "[e]xceptional cases are normally those involving bad faith litigation." Brasseler, U.S.A. I. L.P. v. Stryker Sales Corp., 267 F.3d 1370, 1380 (Fed. Cir. 2001).

Defendant argues that there has been significant

misconduct by plaintiff during the course of the litigation. For the reasons discussed above, however, the Court does not agree that plaintiff's behavior rises to the level of exceptional. Even if it could be considered exceptional, it does not warrant the award of attorney's fees to defendant. It is a cornerstone of our judicial system that each side bears its own costs.

Defendant's Motion to Strike

Defendant also moves to strike exhibit P6 of plaintiff's motion to reconsider under Federal Rule of civil Procedure 12 (f). Exhibit P6 is a letter by plaintiff dated May 8, 2001 to his attorney David Bursik, Esq., detailing his reaction to the Court's summary judgment decision. Defendant claims that comments in the letter relating to the conduct of defendant's attorney are libelous.

Because the Court will deny plaintiff's motion for reconsideration, defendant's motion to strike will be denied as moot. See Piascik-Lambeth v. Textron Automotive Co., Inc, 2000 WL 1875873, at *9 (D.N.H. Dec. 22, 2000).

CONCLUSION

For the reasons discussed above, plaintiff's motion for reconsideration will be denied. Defendant's motion for sanctions and for attorney's fees, and its motion to strike will be denied. Plaintiff's motion for sanctions will also be denied as plaintiff has offered no evidence to support his motion. An appropriate order is attached.

Dated: August 7, 2002

Alfred M. Wolin,
U.S.D.J.

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record. This disposition will appear in tables published periodically.

United States Court of Appeals for the Federal Circuit

02-1556

GARRY L. CAPUTO,

Plaintiff-Appellant,

v.

SEALED AIR CORPORATION (US),

Defendant-Appellee.

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DECIDED: April 8, 2003

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Before BRYSON, GAJARSA, and PROST, Circuit Judges.

PER CURIAM.

## DECISION

Garry L. Caputo ("Caputo") petitions for review of the final judgment of the United States District Court for the District of New Jersey, finding no infringement of Caputo's United States Patent No. 4,579,516 ("the '516 patent") by Sealed Air Corporation ("Sealed Air"). Caputo v. Sealed Air Corp., Civil Action No. 99-CV-482 (Sep. 3, 2002). Because the district court properly interpreted the claims and found no infringement of
the '516 patent by Sealed Air, this court affirms.

## 02-1556 2 BACKGROUND

Caputo is the patentee and owner of the '516 patent, entitled "Forming Roller For Producing Air-Cushioning Product," which is directed to a forming roller used in the production of air packaging or dunnage material commonly known as "bubble wrap." He has more than thirty-six years experience in the packing products industry. Sealed Air is a

New Jersey corporation that has been manufacturing apparatuses for the production of air cushioning material from the early 1960s. Sealed Air owns numerous patents for methods and apparatuses for making bubble wrap. Caputo first accused Sealed Air of infringement of the '516 patent in a June 4,1991 letter sent by his attorney to Sealed Air. Sealed Air denied the charge. The denial apparently concluded the matter until January 26, 1999, when Caputo's attorney again wrote Sealed Air, alleging once again infringement of the '516 patent. In those intervening eight years, the two parties had numerous contacts at various trade shows and during a failed attempt to establish a joint business venture.

Caputo sued Sealed Air on February 2, 1999 for infringement of the '516 patent.

Caputo's infringement allegation stems from his inspection of certain bubble wrap produced by Sealed Air and his analysis that, based solely on the appearance of the product, Sealed Air must be using an infringing forming roller. Sealed Air immediately moved for Rule 11 sanctions against Caputo and his attorney, which were subsequently denied without prejudice. Sealed Air also asserted that Caputo be denied access to information regarding the alleged infringing roller, arguing that it was protected as a trade secret. The magistrate judge granted a protective order on August 21, 2000, prohibiting Caputo, but not his attorney or expert, from viewing material deemed 02-1556 3 confidential and submitted in conjunction with Sealed Air's anticipated motion for summary judgment. That order was subsequently affirmed by the district court. Pursuant to the order, Caputo's attorney and expert were allowed to review the material submitted by Sealed Air with its motion for summary judgment. The district court reviewed a report from Caputo's expert analyzing the Sealed Air materials and a response from Sealed Air. In a memorandum opinion

entered March 30, 2001, the district court granted summary judgment of non-infringement in favor of Sealed Air. The district court construed the claims of the '516 patent. Caputo agreed that there was no literal infringement and that only infringement under the doctrine of equivalents was at issue.
The court found no equivalents in six of nine asserted claim limitations.

Claim 1 of the '516 patent reads, in relevant part:
A forming roller for use with a heated thermoplastic film as brought to this forming roll and when in contact with an outer diameter surface portion of said roller is vacuum-shaped and cooled to bring this heated film to a condition whereat said film is weldable to another film, this roller including:
(b) a central axial bore formed in this metal roller and having a precise size and with a counterbore formed in each end of the roller and substantially concentric with the axial bore;
(d) a multiplicity of fluid-conducting passageways formed longitudinally and substantially parallel to the axis of said roll, each of these passageways open at each end to a counterbore;. . . .'516 patent at col. 5, l. 20 – col. 6, l. 15 (emphases added). Independent claim 10 was also at issue. Limitation (b) of claim 10 reads: "a central axial bore formed in this metal 02-1556 4 roller and having a precise size." '516 patent at col. 6, ll. 65-66 (emphasis added).
Other than this limitation, the district court found claims1 and 10 similar in all respects.

On May 3, 2001, the district court granted Caputo personal access to review the March 30, 2001 opinion, even though the opinion contained restricted confidential information.

Based upon this review, Caputo1 filed a motion for

reconsideration on March 6, 2002, approximately eleven months after the March 30, 2001 opinion. The court issued a second opinion on August 8, 2002 addressing various motions from both parties. The court dismissed Caputo's motion for reconsideration as untimely and denied both parties' motions for sanctions and attorney's fees. The court also reprimanded Caputo for retaining an unredacted copy of a page from Sealed Air's brief in support of its motion for summary judgment (in violation of the protective order), but nevertheless, declined to impose sanctions. Final judgment was entered on September 3, 2002. Caputo appealed to this court and we have jurisdiction pursuant to 35 U.S.C. § 1295(a)(1).

## DISCUSSION

Our review of a grant of summary judgment of patent infringement or noninfringement is plenary. Cole v. Kimberly-Clark Corp., 102 F.3d 524, 528, 41 USPQ2d 1001, 1004 (Fed. Cir. 1996). We first determine whether "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits if any, show that there is no genuine issue as to any material fact and that the 1 From approximately this time until the present, Caputo has been arguing this case pro se. 02-1556 5 moving party is entitled to a judgment as a matter of law." Unidynamics Corp. v. Automatic Prod. Int'l, Ltd., 157 F.3d 1311, 1316, 48 USPQ2d 1099, 1102 (Fed. Cir. 1998) (quoting Fed. R. Civ. P. 56(c)). "In determining whether there is a genuine issue of material fact, the evidence must be viewed in the light most favorable to the party opposing the motion, with doubts resolved in favor of the opponent." Chiuminatta Concrete Concepts, Inc. v. Cardinal Indus., Inc., 145 F.3d 1303, 1307, 46 USPQ2d 1752, 1755 (Fed.

Cir. 1998). "[C]laim construction, as a purely legal issue, is subject to de novo review on appeal."

Cybor Corp. v. FAS Techs., Inc., 138 F.3d 1448, 1451, 46 USPQ2d 1169, 1171 (Fed. Cir. 1998) (en banc). On appeal, Caputo alleges a host of errors by the district court. They can be reduced to the following: (1) Sealed Air continues to infringe the '516 patent, as evidenced by the district court's April 4, 2001 opinion; (2) the district court improperly granted trade secret status to Sealed Air's roller; (3) Sealed Air offered misleading evidence, testimony, and argument; and (4) the burden to prove that the bubble wrap produced by Sealed Air does not use Caputo's patented process shifts to Sealed Air under 35 U.S.C. § 295. "An infringement analysis entails two steps. The first step is determining the meaning and scope of the patent claims asserted to be infringed. The second step is comparing the properly construed claims to the device accused of infringing." Markman v. Westview Instruments, Inc., 52 F.3d 967, 976, 34 USPQ2d 1321, 1326 (Fed. Cir. 1995) (en banc) (internal citation omitted), aff'd, 517 U.S. 370 (1996). Infringement under the doctrine of equivalents requires an element-by-element inquiry. Warner-Jenkinson Co. v. Hilton Davis Chem. Co., 520 U.S. 17, 40, 41 USPQ2d 1865, 1876 02-1556 6 (1997). Equivalence is determined by applying the tripartite function-way-result test. Id. at 39, 41 USPQ2d at 1875. Under this test, an accused product is equivalent to a claimed element if the accused element performs substantially the same function in substantially the same way to accomplish substantially the same result as the claimed element. Graver Tank & Mfg. Co. v. Linde Air Prods. Co., 339 U.S. 605, 608, 85 USPQ 328, 330 (1950).

The district court properly construed limitation (b) to mean that the forming roller requires "a counterbore formed in each end of the roller and substantially concentric with the

axial bore." The court noted that these counterbores provided a reservoir for fluid that passes through limitation (d). The district court construed limitation (d) to mean that "within the roller is another set of longitudinally formed water-conducting passageways that run substantially parallel to [the] axis of the roller." The district court noted that at least one purpose of these passageways was to control temperature along the roller during operation. We find both these constructions to be correct.

The district court found no equivalent to limitations (b) and (d) of claim 1 of the '516 patent in Sealed Air's accused roller, and we will not disturb this finding .
2. At a minimum, the allegedly "equivalent" structure to claim limitation (d) in Sealed Air's accused roller controls temperature (its "function") in a way different than (i.e., not substantially the same as) the '516 patent, thus failing at least one prong of the tripartite test. See id. Finding no equivalent to this element in Sealed Air's forming roller is by 2. The district court compared the properly construed claims to the accused roller in more detail in its decision. Since certain details of the roller are subject to a protective order, however, we will not elaborate on its construction. 02-1556 7 itself sufficient to find no infringement under the doctrine of equivalents. See Warner-Jenkinson, 520 U.S. at 40, 41 USPQ2d at 1876.

Moreover, even if Sealed Air's forming roller did contain equivalents to the "counterbores" of limitation (b) and to the "passageways" of limitation (d), which it does not, we note claim 1 presents those limitations in a precise structural arrangement.
That is, the counterbores are "formed in each end of the roller and substantially concentric with the axial bore," and the passageways are "formed longitudinally and

substantially parallel to the axis of said roll, each of these passageways open at each end to a counterbore." Similarly, claim 10 only describes a "central axial bore," a limitation that does not change the outcome of our analysis. The district court correctly noted that Sealed Air's roller does not contain these elements in such a precise arrangement. Indeed, our review of the record finds that the two elements are in a completely dissimilar arrangement than that of the '516 patent. We will not, as the district court did not, remove these clear structural limitations from the patent in an effort to find infringement under the doctrine of equivalents. See Sage Prods., Inc. v. Devon Indus., Inc., 126 F.3d 1420, 1426, 44 USPQ2d 1103, 1108 (Fed. Cir. 1997).

We have carefully considered the additional arguments presented by Caputo in his brief and find them to be without merit. Accordingly, the decision of the district court is affirmed.

NO COSTS

# United States Court of Appeals for the Federal Circuit

## ORDER

Before Bryson, Circuit Judge, Gajarsa, Circuit Judge, and Prost, Circuit Judge.

A petition for rehearing having been filed by the Appellant, Upon Consideration Thereof, it is

ORDERED that the petition for rehearing be, and same hereby is, DENIED.

The mandate of the court will issue on May 6, 2003.

FOR THE COURT,

Jan Horbaly
Clerk

Dated: April 19, 2003

FILED: U.S. Court Of Appeals
For the Federal Circuit
Apr.29, 2003

cc. Garry L. Caputo
Charles P. Kennedy